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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CHRISTOPHER MCKAY, TERRY MYERS,  
and DAWN OUTLAW, as individuals, on  
behalf of themselves, the general public, and  
those similarly situated,

Plaintiffs,

v.

SAZERAC COMPANY, INC.,

Defendant.

Case No.: 23-cv-00522-EMC

Hon. Edward M. Chen

DECLARATION OF RAJIV V. THAIRANI  
IN SUPPORT OF PLAINTIFFS' MOTION  
FOR CLASS CERTIFICATION

DATE: October 10, 2024

TIME: 1:30 p.m.

CTRM: 5 – 17th Floor

1 I, Rajiv V. Thairani, declare and state that:

2 1. I am an attorney admitted to practice before this Court, an attorney with Gutride Safier  
3 LLP (“GSLLP”), and counsel of record for Plaintiffs Christopher McKay, Terry Myers, and Dawn  
4 Outlaw in the above-captioned matter. I submit this declaration in support of Plaintiffs’ Motion for Class  
5 Certification. Unless otherwise noted, I have personal knowledge of the facts set forth in this  
6 Declaration, and could testify competently to them if called upon to do so.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of a document Defendant  
8 produced in this case with Bates numbers Sazerac-CM\_00000121–23, which states that it is the Alcohol  
9 and Tobacco Tax and Trade Bureau (“TTB”) label certificate for the 50ML version of Fireball Malt, and  
10 which Defendant identified by reference as the only label it used to sell the 50ML version of Fireball  
11 Malt in California during the class period. *See* Ex. 11 at 2–3.

12 3. Attached hereto as **Exhibit 2** are true and correct copies of photos of the front and back  
13 of the 50ML version of Fireball Malt, which I purchased from a 7-Eleven convenience store in Oakland,  
14 California, on or about May 15, 2024.

15 4. Attached hereto as **Exhibit 3** is a true and correct copy of a document Defendant  
16 produced in this case with Bates numbers Sazerac-CM\_00000130–32, which states that it is the TTB  
17 label certificate for the 100ML version of Fireball Malt, and which Defendant identified by reference as  
18 the only label it used to sell the 100ML version of Fireball Malt in California during the class period.  
19 *See* Ex. 11 at 2–3.

20 5. Attached hereto as **Exhibit 4** are true and correct copies of photos of the front and back  
21 of the 100ML version of Fireball Malt, which I purchased from a 7-Eleven convenience store in  
22 Oakland, California, on or about May 15, 2024.

23 6. Attached hereto as **Exhibit 5** is a true and correct copy of a document Defendant  
24 produced in this case with Bates numbers Sazerac-CM\_00000004–06, which states that it is the TTB  
25 label certificate for the 355ML version of Fireball Malt, and which Defendant identified by reference as  
26 the only label it used to sell the 355ML version of Fireball Malt in California during the class period.  
27 *See* Ex. 11 at 2–3.

1           7.           Attached hereto as **Exhibit 6** is a true and correct copy of a document Defendant  
2 produced in this case with Bates numbers Sazerac-CM\_00000068–70, which states that it is the TTB  
3 label certificate for the 50ML version of Fireball Whisky, and which Defendant identified by reference  
4 as the only label it used to sell the 50ML version of Fireball Whisky in California during the class  
5 period. *See* Ex. 11 at 3.

6           8.           Attached hereto as **Exhibit 7** are true and correct copies of photos of the front and back  
7 of the 50ML version of Fireball Whisky, which I purchased from Grand Express Convenience store in  
8 Oakland, California, on or about May 15, 2024.

9           9.           Attached hereto as **Exhibit 8** is a true and correct copy of a document Defendant  
10 produced in this case with Bates numbers Sazerac-CM\_00000094–96, which states that it is the TTB  
11 label certificate for the 100ML version of Fireball Whisky, and which Defendant identified by reference  
12 as the only label it used to sell the 100ML version of Fireball Whisky in California during the class  
13 period. *See* Ex. 11 at 3.

14          10.          Attached hereto as **Exhibit 9** are true and correct copies of photos of the front and back  
15 of the 100ML version of Fireball Whisky, which I purchased from Liquor Hub in Oakland, California,  
16 on or about May 15, 2024.

17          11.          Attached hereto as **Exhibit 10** is a true and correct copy of a document Defendant  
18 produced in this case with Bates numbers Sazerac-CM\_00000071–73, which states that it is the TTB  
19 label certificate for the 375ML version of Fireball Whisky.

20          12.          Attached hereto as **Exhibit 11** is a true and correct copy of excerpts of Defendant Sazerac  
21 Company, Inc.’s First Supplemental Responses and Objections to Plaintiff’s First Set of Interrogatories,  
22 which supplements its July 23, 2023 interrogatory responses (*see* Ex. 45).

23          13.          Attached hereto as **Exhibit 12** is a true and correct copy of Defendant Sazerac Company,  
24 Inc.’s Answer to Complaint.

25          14.          Attached hereto as **Exhibit 13** is a true and correct copy of a spreadsheet Defendant  
26 produced in this case with Bates number Sazerac-CM\_00000136, which Defendant designated as  
27 confidential.

1        15. Attached hereto as **Exhibit 14** is a true and correct copy of an email dated May 26, 2021,  
2 which Defendant produced in this case with Bates numbers Sazerac-CM\_00015222–41 and designated  
3 as confidential.

4        16. Attached hereto as **Exhibit 15** is a true and correct copy of an email dated April 29, 2021,  
5 which Defendant produced in this case with Bates numbers Sazerac-CM\_00029480–87 and designated  
6 as confidential.

7        17. Attached hereto as **Exhibit 16** is a true and correct copy of an article entitled *Table*  
8 *Hopping: Liquor stores heated up over sneaky Fireball move*. written by Steve Barnes and dated April  
9 8, 2021 (available at [https://www.timesunion.com/news/article/Table-Hopping-Liquor-stores-heated-up-](https://www.timesunion.com/news/article/Table-Hopping-Liquor-stores-heated-up-over-16086483.php)  
10 [over-16086483.php](https://www.timesunion.com/news/article/Table-Hopping-Liquor-stores-heated-up-over-16086483.php)) (last accessed on May 20, 2024).

11        18. Attached hereto as **Exhibit 17** is a true and correct copy of an email dated February 19,  
12 2021, which Defendant produced in this case with Bates numbers Sazerac-CM\_00096967–75 and  
13 designated as confidential.

14        19. Attached hereto as **Exhibit 18** is a true and correct copy of an email dated May 21, 2020,  
15 which Defendant produced in this case with Bates numbers Sazerac-CM\_00019990–97 and designated  
16 as confidential.

17        20. Attached hereto as **Exhibit 19** is a true and correct copy of an email (and PowerPoint  
18 attachment) dated October 4, 2018, which Defendant produced in this case with Bates numbers Sazerac-  
19 CM\_00107715–60 and designated as confidential.

20        21. Attached hereto as **Exhibit 20** is a true and correct copy of an email dated December 6,  
21 2018, which Defendant produced in this case with Bates numbers Sazerac-CM\_00119472–76 and  
22 designated as confidential.

23        22. Attached hereto as **Exhibit 21** is a true and correct copy of an email dated December 6,  
24 2018, which Defendant produced in this case with Bates numbers Sazerac-CM\_00119482–86 and  
25 designated as confidential.

23. Attached hereto as **Exhibit 22** is a true and correct copy of an email dated December 6, 2018, which Defendant produced in this case with Bates numbers Sazerac-CM\_00119460–63 and designated as confidential - AEO.

24. Attached hereto as **Exhibit 23** is a true and correct copy of an email dated March 15, 2022, which Defendant produced in this case with Bates numbers Sazerac-CM\_00041290–93 and designated as confidential.

25. Attached hereto as **Exhibit 24** is a true and correct copy of an FAQ that Defendant produced in this case with Bates numbers Sazerac-CM\_00108169–70 and designated as confidential.

26. Attached hereto as **Exhibit 25** is a true and correct copy of an email (and PowerPoint attachment) dated March 13, 2020, which Defendant produced in this case with Bates numbers Sazerac-CM\_00087988–88027 and designated as confidential – AEO.

27. Attached hereto as **Exhibit 26** is a true and correct copy of a document Defendant produced in this case with Bates numbers Sazerac-CM\_00000094–96, which states that it is the TTB label certificate for Flash-Point Cinnamon.

28. Attached hereto as **Exhibit 27** is a true and correct copy of an article entitled *Cheater Brands*, written by David Driscoll and dated July 9, 2017 (available at <https://spiritsjournal.klwines.com/klwinescom-spirits-blog/2017/7/9/cheater-brands.html>) (last accessed on May 20, 2024).

29. Attached hereto as **Exhibit 28** is a true and correct copy of the product listing page for Defendant’s ABA brands appearing on the Finley Distributing website (available at <https://www.finleybeer.com/aba-wine-based-beverages-sazerac/>) (last accessed on May 20, 2024).

30. Attached hereto as **Exhibit 29** is a true and correct copy of an image of Smirnoff vodka downloaded from Haskells.com, an online alcohol retailer (available at <https://www.haskells.com/smirnoff-vodka-1-75l/>) (last accessed on May 20, 2024).

31. Attached hereto as **Exhibit 30** is a true and correct copy of the product listing page for Knob Creek bourbon appearing on the Knob Creek website (available at

1 <https://www.knobbcreek.com/our-products/kentucky-straight-bourbon-whiskey>) (last accessed on May  
2 20, 2024).

3 32. Attached hereto as **Exhibit 31** is a true and correct copy of the product listing page for  
4 Flash-Point Cinnamon appearing on the Finley Distributing website (available at  
5 <https://www.finleybeer.com/flash-point-cinnamon/>) (last accessed on May 20, 2024).

6 33. Attached hereto as **Exhibit 32** is a true and correct copy of the product listing page for  
7 Fireball Malt appearing on Barbank.com, an online alcohol retailer (available at  
8 <https://barbank.com/products/fireball-whisky-50ml>) (last accessed on May 20, 2024).

9 34. Attached hereto as **Exhibit 33** is a true and correct copy of an article entitled *Fake Booze:*  
10 *Convenience stores start stocking shelves with faux liquor*, written by Audrey Biesk and dated May 9,  
11 2018 (available at [https://www.wmbfnews.com/story/38155740/fake-booze-convenience-stores-start-](https://www.wmbfnews.com/story/38155740/fake-booze-convenience-stores-start-stocking-shelves-with-faux-liquor/)  
12 [stocking-shelves-with-faux-liquor/](https://www.wmbfnews.com/story/38155740/fake-booze-convenience-stores-start-stocking-shelves-with-faux-liquor/)) (last accessed on May 20, 2024).

13 35. Attached hereto as **Exhibit 34** is a true and correct copy of document Defendant  
14 produced in this case with Bates numbers Sazerac-CM\_00115758–61 and designated as confidential.

15 36. Attached hereto as **Exhibit 35** is a true and correct copy of an article entitled *How a*  
16 *major distiller slipped liquor look-a-likes into Virginia convenience stores*, written by Ned Oliver and  
17 dated March 4, 2019 (available at [https://virginiamercury.com/2019/03/04/how-a-major-distiller-](https://virginiamercury.com/2019/03/04/how-a-major-distiller-slipped-liquor-look-a-likes-into-virginia-convenience-stores/)  
18 [slipped-liquor-look-a-likes-into-virginia-convenience-stores/](https://virginiamercury.com/2019/03/04/how-a-major-distiller-slipped-liquor-look-a-likes-into-virginia-convenience-stores/)) (last accessed on May 20, 2024).

19 37. Attached hereto as **Exhibit 36** is a true and correct copy of Dr. Heather Maxwell's  
20 LinkedIn page (available at <https://www.linkedin.com/in/drheathermaxwell/>) (last accessed on May 20,  
21 2024) and the subpage showing increased educational detail.

22 38. Attached hereto as **Exhibit 37** is a true and correct copy of a listing for “Fireball Red Hot  
23 Cinnamon Whisky Liquor (50ML)” (printed on May 20, 2024 from  
24 [https://www.ubereats.com/product/b/d089fd37-faf6-5e8a-b387-4fa1e3491619?region\\_id](https://www.ubereats.com/product/b/d089fd37-faf6-5e8a-b387-4fa1e3491619?region_id)), which shows  
25 that, as of May 20, 2024, the product is available for delivery in California through [ubereats.com](https://www.ubereats.com). The  
26 picture in the listing shows the label for Fireball Malt even though the listing describes it as “Fireball . . .  
27 Whisky” and “33%.”

1       39. Attached hereto as **Exhibit 38** is a true and correct copy of a listing for “Fireball Red Hot  
2 Cinnamon Blended Whisky 50ml (66 Proof)” (printed on May 20, 2024, from  
3 <https://bevmo.com/products/15719>), which shows that, as of May 20, 2024, the product is available for  
4 delivery in California through bevmo.com. The picture in the listing shows the label for Fireball Malt  
5 even though it is described as “Fireball . . . Whisky (66 Proof).”

6       40. Attached hereto as **Exhibit 39** is a true and correct copy of an email dated July 13, 2020,  
7 which Defendant produced in this case with Bates numbers Sazerac-CM\_00000155–56 and designated  
8 as confidential.

9       41. Attached hereto as **Exhibit 40** is a true and correct copy of an email dated December 7,  
10 2020, which Defendant produced in this case with Bates numbers Sazerac-CM\_00000333 and  
11 designated as confidential.

12       42. Attached hereto as **Exhibit 41** is a true and correct copy of an email dated March 23,  
13 2021, which Defendant produced in this case with Bates numbers Sazerac-CM\_00000521–23 and  
14 designated as confidential.

15       43. Attached hereto as **Exhibit 42** is a true and correct copy of an email dated July 29, 2020,  
16 which Defendant produced in this case with Bates numbers Sazerac-CM\_00001852–54 and designated  
17 as confidential.

18       44. Attached hereto as **Exhibit 43** is a true and correct copy of an excel spreadsheet produced  
19 by Defendant with Bates number Sazerac-CM\_00002092, showing total depletions of the product at  
20 wholesale (in dollars and by cases sold) from April 2022 – October 2023 (*see* Ex. 11 at 8), which  
21 Defendant designated as confidential – AEO.

22       45. Attached hereto as **Exhibit 44** is a true and correct copy of excerpts from the Rule  
23 30(b)(6) deposition of Mark Brown, Executive Chairman and former CEO of Sazerac Company, Inc.,  
24 taken on April 22, 2024, which Defendant designated as confidential.

25       46. Attached hereto as **Exhibit 45** is a true and correct copy of Defendant Sazerac Company,  
26 Inc.’s Objections and Responses to Plaintiff’s First Set of Interrogatories verified on July 23, 2023.

1 I declare under penalty of perjury of the laws of the United States that the foregoing is  
2 true and correct.

3 DATED: May 21, 2024

4 **GUTRIDE SAFIER LLP**

5 /s/Rajiv V. Thairani /  
6 Rajiv V. Thairani  
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